

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACQUELINE Y. HORNE and DEPARTMENT OF THE NAVY,
NAVAL MEDICAL CENTER, San Diego, CA

*Docket No. 99-499; Submitted on the Record;
Issued July 21, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained an emotional condition in the performance of duty.

On June 21, 1997 appellant, then a 53-year-old medical records technician, filed a claim for nervousness, high blood pressure, high blood sugars, temporary blindness, blurred vision, dizziness, headaches, heart palpitations, shortness of breath, incoherent confusion and twitching which she attributed to stress in her employment and to mistreatment and harassment from her supervisors. Appellant stopped work on May 24, 1997.

By decision dated September 9, 1998, the Office of Workers' Compensation Programs found that appellant's emotional condition did not occur in the performance of duty.

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act. On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.¹

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

Appellant described the incidents and conditions of her employment to which she attributed her emotional condition in a letter received by the Office on August 29, 1997. Regarding appellant's allegation that she was denied a promotional opportunity in May 1995, the Board has held that denials by an employing establishment of a promotion are not compensable factors of employment under the Act, as they do not involve appellant's regular or specially assigned work duties.² Appellant alleged that this promotion was wrongfully denied, in that the employing establishment relied on evidence she provided of her medical conditions. The evidence, however, indicates that a certified tumor registry certificate was required as a qualification for the position to which appellant sought to be promoted, and that appellant did not have this certificate. Appellant also objected to the tone used by her supervisor in telling her she was not qualified for this position, characterizing it as "demeaning." While the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Act.³ Appellant has not shown how the tone in which this factual statement was made would rise to the level of verbal abuse or otherwise fall within the coverage of the Act, even though the statement was made in the presence of coworkers.⁴

Appellant stated that in July 1996 coworkers received a cash award but she did not. This, like the denial of a promotion, involves an administrative or personnel matter not related to appellant's regular duties. Appellant could bring her nonreceipt of a cash award within coverage of the Act if she were to establish error or abuse in this action by the employing establishment, but she has not presented any evidence of such error or abuse.⁵ The handling of disciplinary actions is also an administrative function of the employer and not a duty of the employee. For this reason, coverage can be afforded for reactions to disciplinary actions only if the evidence demonstrates error or abuse on the part of the employing establishment.⁶ Appellant has not shown any error or abuse in the employing establishment's May 13, 1997 letter of reprimand for absence without approval and misuse of approved sick leave. Appellant's grievance of this letter of reprimand was denied, and appellant's explanation of the incidents that resulted in the May 13, 1997 letter of reprimand does not demonstrate error or abuse by the employing establishment. The fact that an earlier letter of reprimand, issued on May 30, 1995 for failure to follow supervisory instructions, was removed does not in and of itself establish error or abuse.⁷

² *Donald W. Bottles*, 40 ECAB 349 (1988).

³ *Harriet J. Landry*, 47 ECAB 432 (1996).

⁴ *Compare Alfred Arts*, 45 ECAB 530 (1994) (the Board found the claimant's reaction to remarks from coworkers resulted from his frustration at not being permitted to return to his former position); *with Abe E. Scott*, 45 ECAB 164 (1993) (the Board found that a supervisor's use of the epithet "ape" was derogatory and constituted harassment).

⁵ Administrative or personnel matters will be considered compensable employment factors where the evidence discloses error or abuse on the part of the employing establishment. *Richard J. Dube*, 42 ECAB 916 (1991).

⁶ *Sharon R. Bowman*, 45 ECAB 187 (1993).

⁷ *Michael Thomas Plante*, 44 ECAB 510 (1993).

Appellant also cited as a factor contributing to her emotional condition her assignment to a detail in January 1997 and the extension of this detail in May 1997. This appears to be the primary factor in appellant's disability, as upon being informed of the extension of the detail, appellant stopped work immediately. Assignment of work, however, is an administrative or personnel action by the employing establishment, and coverage under the Act can be afforded only where the evidence demonstrates error or abuse.⁸ Appellant's grievances over the assignment and the notification of it were denied, and there is no evidence that the assignment to a detail was erroneous or abusive.

Appellant has cited and substantiated one factor of employment that can be covered under the Act: verbal abuse by her supervisor.⁹ Moreover, the employing establishment, in its July 17, 1997 response to appellant's claim, stated that appellant's supervisor was sanctioned for rebuking appellant in front of other employees rather than privately. Verbal altercations are recognized by the Board as giving rise to a compensable factor of employment,¹⁰ and the employing establishment in the present case acknowledged that the supervisor had erred and acted inappropriately.

Since appellant has cited and substantiated a compensable employment factor, the Board will turn to an analysis of the medical evidence. Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that her condition was caused or adversely affected by her employment. As part of this burden, she must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation.¹¹ To meet her burden of proof, appellant must submit medical evidence attributing her emotional condition to specific substantiated compensable employment incidents and conditions.¹²

The medical evidence is not sufficient to establish that appellant's emotional condition is causally related to the substantiated compensable employment incidents noted above. Dr. Loretta Gordon, in a June 24, 1997 report, stated that appellant's problem was related to her relationship with her supervisor, but this does not address the specific incidents found compensable and is not sufficient to meet appellant's burden of proof. In a report dated March 10, 1998, Dr. Don E. Miller, a clinical psychologist, cited a substantiated compensable factor – the May 1996 incident in which appellant's supervisor “verbally attacked the patient in front of others” – and explained why such verbal assaults were “devastating” to appellant. Dr. Miller then related appellant's emotional reaction to a perception that her supervisor wanted to get rid of her, concluding, “Thus, the patient's regularly assigned job duty at 32nd Street, as set up by prior assaultive behavior of her supervisor ... caused the extreme level of emotional distress and elevations of her already existing depression to levels where the patient was

⁸ *James W. Griffin*, 45 ECAB 774 (1994).

⁹ *See Mary A. Sisneros*, 46 ECAB 155 (1994).

¹⁰ *See Garry M. Carlo*, 47 ECAB 299 (1996).

¹¹ *Bruce E. Martin*, 35 ECAB 1090 (1984).

¹² *William P. George*, 43 ECAB 1159 (1992).

temporarily totally disabled from engaging in any work for five months.” This opinion relates appellant’s emotional condition to her perception that her supervisor was trying to get rid of her, which is not shown to be founded and therefore is not compensable,¹³ and to her assignment to a detail, which is also not compensable, as found above. Appellant has not met her burden of proof.

The decision of the Office of Workers’ Compensation Programs dated September 9, 1998 is affirmed.

Dated, Washington, D.C.
July 21, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member

¹³ See *Jack Hopkins, Jr.*, 42 ECAB 8118 (1991).